

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

STEPHANIE LOWE,

Plaintiff,

v.

No. 14-cv-0775 KG/SMV

BNSF RAILWAY COMPANY,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT BNSF RAILWAY COMPANY'S
MOTION TO DISMISS, OR, IN THE ALTERNATIVE, FOR SANCTIONS**

THIS MATTER is before the Court on Defendant BNSF Railway Company's Motion to Dismiss, or, in the Alternative, for Sanctions for Plaintiff's Willful and Bad Faith Discovery Violations [Doc. 68], filed on July 6, 2015. Plaintiff responded on August 4, 2015. [Doc. 86]. Defendant replied on August 18, 2015. [Doc. 93]. The Court heard oral argument on September 3, 2015. [Doc. 113]. After the hearing, Defendant filed two supplements. [Docs. 115, 120]. Having considered the briefing, supplements, oral argument, and relevant law and being otherwise fully advised in the premises, the Court will deny the Motion to the extent that it seeks dismissal or exclusion of certain evidence and testimony at trial. The Court will grant the motion to the extent that Plaintiff must submit to a supplemental deposition as ordered herein.

For the reasons stated on the record at the hearing on September 3, 2015, Plaintiff must submit to a supplemental deposition regarding her medical treatment and/or medical providers not affirmatively disclosed by Plaintiff on or prior to May 7, 2015, and nothing else. The

deposition must take place no later than March 11, 2016, or if the parties both agree, no later than April 11, 2016. The on-record duration may last no longer than 4 hours. Plaintiff is responsible for the cost of the deposition. On careful consideration of the circumstances present in this case, ordering Plaintiff to pay Defendant's attorney fees for the supplement deposition is not warranted at this time. However, if Defendant prevails at trial, this order stands as the undersigned's recommendation that the presiding judge award such attorney fees as part of the costs.

Finally, Defense counsel's second supplement [Doc. 115] contains an implicit request that its expert be allowed to supplement her expert report. Such request is granted. Defendant's expert may supplement her report no later than 30 days after the supplemental deposition is held. In the event that Defendant declines the opportunity to conduct a supplemental deposition, any supplement to Defendant's expert report must be produced no later than April 11, 2016.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant BNSF Railway Company's Motion to Dismiss, or, in the Alternative, for Sanctions for Plaintiff's Willful and Bad Faith Discovery Violations [Doc. 68] is **GRANTED in part and DENIED in part.**

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge